



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD



TO: Commissioners Schlossberg, Brown, Carlson, Barofsky and McRae
FROM: Frank Lawson, General Manager
DATE: December 29, 2021 (January 4, 2021 Regular Session)
SUBJECT: 2022 Election of Officers and 2022 Board Liaison Assignments
OBJECTIVE: Board Action

Issue/Background

The EWEB Bylaws, Article V, Section 1 state that the board president and vice president will be elected annually. Election of officers typically occurs at the first regular board meeting of each calendar year.

In accordance with Board Policy GP12, the Board may use committees, outside appointments and liaisons to staff work as a means of gathering and disseminating information, representing the Board, and providing preliminary input to Board decisions. Furthermore, the policy provides directives for establishing said assignments. A copy of the policy is attached for reference.

2021 BOARD APPOINTMENTS

Board Appointments

2021 Election of Board Officers

President	Mindy Schlossberg
Vice President	John Brown

2021 Appointment of Commissioners

Lane Council of Governments (LCOG)	Sonya Carlson (primary) John Barofsky (alternate)
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Provides coordination among Lane County governmental agencies. Term of organization is ongoing; term of appointment is annual.

McKenzie Watershed Council	John Barofsky No designated commissioner as alternate
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Fosters better stewardship of the McKenzie Watershed resources through voluntary partnerships and collaboration. Term of organization is ongoing; term of appointment is annual.

Other Post-Employment Benefits (OPEB)	John Brown No designated commissioner as alternate
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A Commissioner is not a voting member of the Section 115 Trust that has been set up to oversee EWEB contributions to the trust, the investment of funds, and measurement of the unfunded liabilities of the retiree medical plan. Term of appointment is ongoing.

Springfield Utility Board (SUB)

John Brown

No designated commissioner as alternate

EWEB is interested in partnering with SUB to build a long-term resilient approach to managing multiple waters sources in the metropolitan area. The SUB liaison will assist the General Manager with the exploration of strategic water opportunities. Term of assignment is ongoing; term of appointment is annual.

Lane Electric Cooperative

Mindy Schlossberg

No designated commissioner as alternate

The liaison will partner with the General Manager on future discussions and collaboration with Lane Electric Cooperative. Term of assignment is ongoing; term of appointment is annual.

City of Eugene

Mindy Schlossberg

Matt McRae

Although recently focused on climate issues, in practice this liaison role is between EWEB and City of Eugene leadership (Board President and Vice President, Mayor, Council President and Vice President) on areas of mutual interest. It is the Board's desire to partner and exchange information with the City of Eugene on a variety of matters, including but not limited to EWEB's role in decarbonization, resiliency, and emergency preparedness. This liaison will collaborate with the City of Eugene leadership and provide the Board periodic reports on discussions with the City. The term of assignment is ongoing; the term of appointment is annual.

POTENTIAL NEW LIAISON ASSIGNMENTS

Discussion

The Board directed the General Manager to conduct a formal Request for Proposals (RFP) to dispose of EWEB's Headquarters Property. The Board may appoint up to two Board Liaison(s) to each of the two staff managed teams who will be working on activities that support the eventual sale of the property. The two teams are the EWEB Riverfront Property Project Team (Project Team) and the EWEB Riverfront Property Proposal Evaluation Team (Evaluation Team). The Board may appoint the same Commissioner(s) to both teams if desired.

It is important to note the differences between board liaisons and subcommittees. While serving as a liaison to staff work, board members should stay within the structure provided in board policy which includes; participating as other project team members, with no more or less authority than other team members; not directing staff or managing the work of the group; bringing important information back to the full Board; and representing the views of the Board to the best of their ability. Recommendations should be made by the project team and submitted to the entire Board. Any decisions requiring board-action will be made by the full Board in accordance with the EWEB bylaws.

It may be sufficient to have one Board member designated as a liaison to a particular project, but if the Board is interested in having two Commissioners serve as liaisons to the same project, the Board should be careful to not create a sub-committee which could trigger public meetings laws. In that vein, it is prudent to ensure that the designated Commissioner liaisons do not meet together, or with other

board members, outside the staff project meetings and board meetings to discuss their thoughts and opinions on the matter.

Should the Board choose to appoint two liaisons to the Project Team and/or the Evaluation Team, each Commissioner would be assigned as an individual Board Liaison to the project. The concurrent assignment of two separate Liaisons to the project is not intended to create a committee or sub-committee, rather, the two Board Liaisons would be directed to act independently in fulfilling their respective Liaison roles in accordance with board policy GP12.

The following ethical considerations are provided in the context of both the Board Liaison roles, and the role of individual Commissioners deliberating and taking action with the full Board.

By nature of the competitive process and the possibility for a wide range of responses, any Commissioner may have an ethical conflict arise which could restrict their further involvement. Following are a few things to bear in mind throughout the process.

A conflict of interest is gauged in large part on whether it *could* (potentially) or *would* (actually) result in a financial benefit to:

- the public official, or
- the official's relative, or
- a business with which the official, or a relative of the official, is associated.

Transparency is the key to reduce risk to EWEB and the Commissioner. In the event of a *potential* conflict of interest, the Commissioner must publicly state the nature of the potential conflict and their intentions. If the matter giving rise to the potential conflict of interest is raised at another meeting(s), the public disclosure must be made again at the separate meeting(s). ORS 244.120(3).

In these events, EWEB may use its discretion to give notice of any potential or actual conflict of interest, and how it was disposed of, to the Oregon Government Ethics Commission within a reasonable period of time ORS 244.130. If there are specific sideboards which are developed to insulate a commissioner from a potential conflict of interest, then EWEB may consider whether giving notice to the Oregon Government Ethics Commission under ORS 244.130 would serve a laudable purpose.

A public official is met with an *actual* conflict of interest when the public official participates in action that *would* affect the financial interest of any of the aforementioned parties.

[ORS 244.020](#) contains related definitions, specifically "Relative" ORS 244.020 (16), "Business" and "Business with which the person is associated" ORS 244.020 (2) and (3).

Commissioners will have a continuing personal ethical obligation to consider exposure to conflicts of interest as individuals as the project evolves. If an *actual* conflict of interest arises, then following public announcement, the board member would be under an onus to refrain from further participation in official action on the issue which gave rise to the actual conflict in accordance with ORS 244.120(2)(b) unless a statutory exception applied.

For the Board's consideration:

According to Board Policy GP12, the designated commissioner(s) participate as a project team member(s) with "no more or less authority than other team members," thus the Liaisons could be involved in all areas of RFP development and evaluation unless the terms of the Board assignment were to limit their role, and subject to any restriction under the Oregon Government Ethics laws.

When creating the two new liaison roles, Commissioners should contemplate the scope of the parameters, in particular participation in the following areas and the associated advantages and disadvantages:

- During the development of the RFP, should the Property Team Liaison(s) fully participate with staff in the recommendation of evaluation criteria and weighted values, or should staff develop and refine this aspect of the RFP based on Commissioners' feedback received during public board meetings?
- As will be discussed during the HQ Property agenda item, during the evaluation of proposals for the competitive range, should the Evaluation Team Liaison(s) participate fully with staff during the evaluation and scoring of proposals and subsequent recommendation to the General Manager and the full Board, or should the Liaison(s) role be limited to serve as a non-scoring member of the Evaluation Team? Conversely, should Commissioners' evaluation only occur in the company of the full Board?

From a legal perspective each of the above options are acceptable, subject to any conflict-of-interest provisions. Some methods provide more transparency and may inspire greater public confidence in the fairness and equity of the process.

EWEB Riverfront Property Project Team

Unless the Board chooses to include limitations in the liaison appointment, the liaison(s) will fully participate as project team members in activities related, but not limited to, the development of the EWEB Downtown Riverfront Property RFP and its related processes. The Project Team may also provide an advisory role to the Board through the duration of the RFP process. The liaison(s) will be involved in various aspects of the RFP development such as recommending priorities and goals for disposal of the property, recommending an evaluation and selection process and schedule, and creating a draft of the RFP's content including evaluation criteria and scoring for the proposals and potential presentations from proposers in the competitive range. These recommendations will be made by the Project Team and submitted to the entire Board. All decisions requiring board-action will be made by the full Board in accordance with the EWEB bylaws. The term of this Board Liaison assignment will expire upon notice of award of the RFP.

EWEB Riverfront Property Proposal Evaluation Team

Unless the Board chooses to include limitations in the liaison appointment, the liaison(s) will fully participate as project team members in the evaluation and scoring of proposals, and subsequent recommendation to the General Manager and the full Board. The term of this liaison assignment expires after all the following conditions are met; the RFP solicitation has closed (no additional proposals accepted), a recommendation has been submitted to the full Board, and the Board has had an opportunity to resolve any questions or clarifications with the Evaluation Team.

Requested Board Action

An agenda item is scheduled for January 4, 2022, at which time Commissioners will have the opportunity to discuss and take action on the 2022 election of officers and board liaison assignments. Following the Board's decisions, staff will prepare a resolution for formal adoption of these appointments on the February 2022 consent calendar.

Attachment: Board Policy GP12



Governance Process Policies (GP Policies)

GP12 Board Committees, Outside Appts, Liaisons to Staff Projects & Advisory
 Committees
Effective Date **October 3, 2006**

The Board may use committees, outside appointments and liaisons to staff work as a means of gathering and disseminating information, representing the Board and providing preliminary input to Board decisions.

Specifically,

- The Board may choose to appoint standing (permanent) and temporary committees.
 - All committees will be created and defined by Board Resolution and formally adopted by the Board. The resolution will state the purpose, composition, membership (term and succession), and in the case of temporary committees, the expected dissolution date. Committees may include members from outside the organization if the Board so chooses.
 - Committees will be used to discuss and refine information and to make recommendations to the full Board.
 - All committee meetings (except where exempt under Oregon Revised Statutes) shall be open to the public.
 - When Board committees are used, Commissioners will be assigned so as to reinforce the wholeness of the Board's job and so as never to interfere with delegation from Board to the General Manager.
- The Board may appoint a Commissioner to an outside organization or entity.
 - All outside appointments will be made by Board Resolution and formally adopted by the Board. The resolution will state the purpose of the appointment, the nature of the Commissioner's role, the term of the appointment and the succession if applicable.
 - As an appointee to an outside organization, it is the responsibility of the Commissioner to represent policies and resolutions adopted by the Board. If an issue arises in which the Board has not previously taken a position, it is the responsibility of the Commissioner to represent what he/she believes the Board majority would be. Should the majority of the Board decide that any action taken by an appointee did not represent the view of the majority; the Board can send a written notice modifying the previous action.
- The Board may designate Commissioners to act as formal or informal liaisons to staff managed projects or work assignments.



- All liaison assignments will be made by Board Resolution and formally adopted by the Board. The resolution will state the purpose of the liaison assignment, the term of the assignment and the expected completion date.
- As a liaison to a staff managed project or work assignment, Commissioners will participate as other project team members, with no more or less authority than other team members. It is the responsibility of the Commissioner to bring important information back to the full Board and to represent the views of the Board, to the best of the Commissioner's ability.
- Commissioners assigned, as formal or informal liaisons will not direct staff or manage the work of the team or group. Decisions requiring action from the Board will be brought to the full board in accordance with the by-laws.
- The Board may designate Commissioners to participate in outside advisory committees whose purpose is to gather information from the community on projects or work currently engaged by or under consideration by the utility.
 - All advisory assignments will be made by Board Resolution and formally adopted by the Board. The resolution will state the purpose of the advisory committee, the term of the assignment and the expected completion date.
 - As a member of a community advisory committee, Commissioners will participate as other committee members, with no more or less authority than other members. It is the responsibility of the Commissioners to bring important information back to the full Board and to represent the views of the Board, to the best of the Commissioners ability.

Source: John Carver/Patrick Lanning, Board, Board Approved 10/03/06.